

EXHIBIT C

**Emergency Procedures
U. S. Army Corps of Engineers (USACE) Permits
Regulatory Division, Fort Worth District, USACE
May 2014**

This guidance addresses emergency situations where permits are required from the U. S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, including those associated with work stoppages as a result of alleged violations of Section 404 and/or Section 10.

Emergency Situations

Section 404/10 permitting situations:

1. Normal situations – The permit applicant proceeds with project permitting following standard procedures.
2. Special situations – The permit applicant has a project with special considerations. For these types of situations, a streamlined permitting process may be possible through case-by-case negotiations with the USACE.
3. Emergency situations – These are very serious situations that could result in the loss of life, the loss of property, and/or a significant economic hardship if steps to remedy the situation are not immediately pursued. This may include emergencies due to a natural disaster (e.g., flood, hurricane, earthquake, etc.) or a catastrophic (sudden and complete) failure of a facility due to an external cause (e.g., a bridge collapse after being struck by a barge).

The USACE addresses the permitting process for emergency situations in its regulations [See 33 CFR 325.2(e)(4)]. The USACE regulations define an “emergency” as “a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures.” In emergency situations, USACE Division Engineers, in coordination with the USACE District Engineers, are authorized to approve special processing procedures to expedite permit issuance. The USACE also uses alternative permitting procedures, such as general permits and letters of permission, when appropriate, to expedite processing of permit applications for emergencies.

The appropriate USACE office should be **contacted immediately** when an emergency situation has been identified. Even in an emergency situation, reasonable efforts must be made to receive comments from interested federal, state, and local agencies, and the affected public. Also, a public notice of any special procedures authorized and the corresponding rationale will be appropriately published by the USACE as soon as practicable.

Flooding and hurricanes are an example of emergency situations caused by a natural disaster. The Regulatory Branch can issue a public notice to clarify permitting procedures for dealing with the clean up and repair caused by these events. The public announcements would also provide USACE contact names and numbers for assistance.

Another example of a potential emergency situation would be safety issues associated with work stoppage as a result of an alleged violation of Section 404 and/or Section 10, including the issuance of a cease and desist order (C&D) by the USACE or U. S. Environmental Protection Agency (EPA). If a C&D is issued on a project already under construction, the stoppage of construction activities in the area where the alleged violation occurred could result in a safety situation that would be considered an emergency using the above USACE definition [33 CFR 325.2(e)(4)]. In situations where emergencies occur while work is halted in an area where an alleged violation occurred, the USACE District Engineer may allow work to continue (subject to appropriate limitations and conditions) while the alleged violation is being resolved [See 33 CFR 326.3 (c)(4) and (d)(1)]. Initial corrective measures to address the safety concerns may also be specified by the USACE District Engineer. In addition, generally work can continue in upland areas (away from the alleged violation and in those areas of waters of the United States where the ongoing work is in compliance with an existing USACE permit). However, in all case, it is important for the permittee/applicant to contact the appropriate USACE representative if there are any questions.

Specific Emergency Procedures Guidance

Permit applicants should follow the steps below to streamline USACE permit acquisition and expedite response to emergency situations.

1. Determine if an emergency exists or potentially exists
 - Use USACE definition at 33 CFR 325.2 (e)(4). An “emergency is “a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures.”
2. If the situation is an emergency under the USACE definition, **immediately contact** the USACE district in which the emergency exists and, in certain cases, EPA by telephone using the following contacts:
 - Fort Worth District USACE
 - Primary Contact: Chief, Regulatory Division (817)886-1730 (currently Stephen Brooks)
 - Alternate Contact: Chief, Evaluation Branch (817)886-1863 (currently Jennifer Walker)
 - Second Alternate Contact: Emergency Management/Security Office (817)886-1444
 - EPA (If the situation is the result of an enforcement case and EPA has assumed enforcement responsibility)
 - Primary Contact: Chief, Marine and Wetlands Section, EPA, Region 6 (214)665-7275 (currently Sharon Parrish)
 - Alternate Contact: (214)665-7576 (currently Donna Mullins)

Note: The USACE may determine that emergency work may be quickly permitted by an alternative permitting procedure, e.g., letter of permission, general permit, that would require minimal or no additional information or coordination.
3. Follow-up the telephone contact as soon as possible with written documentation (via fax) to document the emergency and provide required information to the appropriate USACE District office. The following information is the **minimum** necessary for the USACE to proceed:
 - name of applicant

- location of work (vicinity map showing location)
 - description of work/project including basic dimensions and drawings. The drawings may be approximations and do not have to be to scale or be detailed engineering drawings.
 - cause of emergency (describe when and how the emergency occurred)
 - urgency of work (describe why the situation is an emergency using USACE definition and explain what would happen if emergency permitting procedures are not used)
 - time to complete emergency work (estimate beginning and end). **Note:** If the work would not be completed for several months, it would not normally be considered an emergency by the USACE.
 - summary of resource agency coordination. Attempt to contact, and describe any coordination with, federal and state resource agencies, including at a minimum the EPA, the U. S. Fish and Wildlife Service, the Texas Commission on Environmental Quality, the Texas Parks and Wildlife Department, and the Texas Historical Commission. Provide a summary of each agency's comments on the proposed work. **Note:** An alternative permitting procedure may require some resource agency coordination, but in some cases not to the extent listed above. Follow case-by-case guidance provided by the USACE.
4. USACE will evaluate the information provided by the permit applicant and proceed under an alternative permitting procedure, if appropriate, or an emergency procedure if an alternative procedure does not apply. If an emergency procedure is followed, the permit applicant should proceed according to USACE direction in providing additional information or taking immediate action, as necessary. Once the USACE receives adequate information, it will develop the final emergency permitting procedure and complete the permit action, normally within one day. The permit applicant must ensure that the work requiring USACE authorization does not continue until the USACE provides such authorization.

In summary, a permit applicant should **contact immediately** the appropriate USACE office upon identifying a situation meeting the USACE definition of an emergency when the work either 1) requires a Section 404 and/or 10 Permit, and a permit has not been obtained or 2) has a Section 404 and/or 10 permit, but the activity is not in compliance with the terms and conditions of that permit.

If you have any questions or comments, please contact the Regulatory Branch, Fort Worth District, USACE at (817)886-1731 during normal business hours.